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5 SAEED YOUSUF,
6 Plaintiff,
7 v.
8 ROBERT A. BOTHMAN, INC., et al.,
9 Defendants.

10 Case No. [5:16-cv-05098-EJD](#)
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**ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS**

13 Re: Dkt. No. 5
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Plaintiff Saeed Yousuf is a former employee of Defendant Robert A. Bothman, Inc. (“RAB”). Yousuf’s claims arise from RAB’s termination of his employment. Before the Court is Defendants’ Rule 12(b)(6) motion to dismiss Yousuf’s fourth cause of action, which alleges that RAB violated California Labor Code §§ 201 and 203 by failing to compensate him for unused vacation time. Defendants’ motion will be GRANTED.

20 **I. BACKGROUND**

21 RAB hired Yousuf as its Chief Operating Officer in 2002. Compl. ¶ 8, Dkt. No. 1. On
22 February 12, 2016, RAB told Yousuf that his employment would end on May 14 after a 90-day
23 termination period, during which he would continue to receive his usual wages and benefits. Id. ¶¶
24 16–17.

25 On April 12, RAB told Yousuf that he would no longer receive his salary. Id. ¶ 23; Yousuf
26 Decl. Ex. 4, Dkt. No. 17-4. Instead, he would be required to use his accrued paid vacation time for
27 the remainder of the termination period. Yousuf Decl. Ex. 4, Dkt. No. 17-4 (“[T]he Company is

1 electing to schedule vacation for you beginning April 18th. You will, therefore, continue to get
 2 paid through May 14th, but you will be using your accrued vacation days beginning April 18th
 3 through your last day of employment.”). By then, Yousuf had saved 144 hours of vacation time,
 4 and it continued to accumulate until he left RAB on May 14. Id. Yousuf alleges that when his
 5 employment ended, he had earned 148.52 hours of unused vacation time. Compl. ¶ 51. However,
 6 when he left, RAB paid him for only 28.52 hours.¹ Id. ¶ 29. Based on this discrepancy, Yousuf
 7 alleges that “RAB inappropriately deducted 120 hours” of vacation time from his total amount. Id.
 8 ¶ 6.

9 Yousuf brings seven causes of action arising from the termination of his employment. Id.
 10 ¶¶ 34–77. RAB, joined by the other Defendants, now moves to dismiss the fourth, which alleges
 11 that Defendants violated the California Labor Code by failing to pay Yousuf for his unused
 12 vacation time. Defs.’ Mot. to Dismiss (“MTD”), Dkt. No. 5.

13 II. LEGAL STANDARD

14 A motion to dismiss under Fed. R. Civ. P. 12(b)(6) tests the legal sufficiency of claims
 15 alleged in the complaint. Parks Sch. of Bus., Inc. v. Symington, 51 F.3d 1480, 1484 (9th Cir.
 16 1995). Dismissal “is proper only where there is no cognizable legal theory or an absence of
 17 sufficient facts alleged to support a cognizable legal theory.” Navarro v. Block, 250 F.3d 729, 732
 18 (9th Cir. 2001). The complaint “must contain sufficient factual matter, accepted as true, to ‘state a
 19 claim to relief that is plausible on its face.’ ” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting
 20 Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)).

21 III. DISCUSSION

22 A. Request for Judicial Notice

23 RAB asks the Court to take judicial notice of information on the website of the California
 24 Division of Labor Standards and Enforcement (“DLSE”). Dkt. No. 6. Specifically, RAB requests
 25 judicial notice of the Frequently Asked Questions page, which includes a question about vacation

27 ¹ At paragraph 29 of the complaint, Yousuf alleges that he was paid for 28.52 hours; at paragraph
 28 51, he alleges that he was paid for 28 hours.

1 time:

2 **Q. Can my employer tell me when to take my vacation?**

3 A. Yes, your employer has the right to manage its vacation pay
4 responsibilities, and one of the ways it can do this is by controlling
5 when vacation can be taken and the amount of vacation that may be
taken at any particular time.

6 Frequently Asked Questions: Vacation, Division of Labor Standards and Enforcement,

7 http://www.dir.ca.gov/dlse/faq_vacation.htm, archived at <https://perma.cc/K7Y3-RFVA> (last
8 visited Feb. 21, 2017).

9 The DLSE's legal conclusions, while informative, are not binding here. See Morgan v.
10 United Retail Inc., 186 Cal. App. 4th 1136, 1147–48 (2010) (“Although not binding on a court, the
11 DLSE's construction of a statute, whether embodied in a formal rule or a less formal
12 representation, is entitled to consideration and respect.”); Murphy v. Kenneth Cole Prods., Inc., 40
13 Cal. 4th 1094, 1106 (2007) (“While the DLSE's construction of a statute is entitled to
14 consideration and respect, it is not binding and it is ultimately for the judiciary to interpret this
15 statute.”); Yamaha Corp. of Am. v. State Bd. of Equalization, 19 Cal. 4th 1, 7 (1998) (“Courts
16 must . . . independently judge the text of the statute, taking into account and respecting the
17 agency's interpretation of its meaning, of course, whether embodied in a formal rule or less formal
18 representation.”).

19 The Court declines to judicially notice the DLSE's interpretation.

20 **B. Vacation Time**

21 Yousuf alleges that RAB violated California law by failing to pay him for unused vacation
22 time. Compl. ¶¶ 47–52. Specifically, Yousuf alleges that RAB violated California Labor Code
23 § 201, which provides that “[i]f an employer discharges an employee, the wages”—including
24 unused vacation time—“earned and unpaid at the time of discharge are due and payable
25 immediately.” Yousuf concedes that RAB paid him for 28 hours of vacation time when his
26 employment ended. Pl.’s Opp. to Defs.’ Mot. to Dismiss (“Opp.”) at 3, Dkt. No. 13. But he claims
27 that RAB improperly required him to use 120 hours of vacation time, instead of paying him his

1 usual salary, during the 90-day termination period when his employment ended. Id. As a result,
2 Yousuf believes he should have been paid for an addition 120 hours of vacation time. Id. Yousuf
3 further alleges that RAB should face penalties under Labor Code § 203 for willful violations of §
4 201. Compl. ¶ 48.

5 RAB agrees that employers must pay unpaid wages at the time of discharge—and it argues
6 that it did exactly that. Defs.’ Reply in Support of Mot. to Dismiss at 2, Dkt. No. 18. In RAB’s
7 view, Yousuf had only 28 hours of unused vacation when his employment ended, because RAB
8 was free to require Yousuf to use the rest of his vacation time during the 90-day termination
9 period. Id.; Opp. at 3.

10 RAB’s position is consistent with the DLSE’s view, discussed above, that employers can
11 tell employees when to use their paid vacation time. Yousuf offers no authority to the contrary.
12 Yousuf cites the DLSE Enforcement Manual for the rule that employers cannot impose “use-it-or-
13 lose-it” policies, under which employees forfeit vacation time unless they use it within the year.
14 Opp. at 5; Division of Labor Standards and Enforcement, Enforcement Policies and Interpretation
15 Manual 15.1.4 (2002), available at http://www.dir.ca.gov/dlse/DLSEManual/dlse_enfcmmanual.pdf,
16 archived at <https://perma.cc/D495-LH4F>. That rule, however, does not contradict the DLSE’s
17 position that employers can “control[] when vacation time can be taken and the amount of
18 vacation that may be taken at any particular time.” Frequently Asked Questions, supra. And
19 Yousuf does not allege that RAB imposed a use-it-or-lose it policy: his claim is not that RAB
20 required him to forfeit his accrued vacation time, but that RAB required him to use it.

21 Yousuf also cites the DLSE manual for the rule that, “on termination, employees are
22 entitled to a pro rata share of their vacation pay without any reduction or loss based on conditions
23 imposed by the employer.” Enforcement Policies and Interpretation Manual, supra (Yousuf’s
24 emphasis). The DLSE draws this rule from the California Supreme Court’s opinion in Suastez v.
25 Plastic Dress-Up Co., 31 Cal. 3d 774 (1982). In that case, the employer refused to pay departing
26 employees for unused vacation time unless the employees remained at the company for the rest of
27 the employment year (i.e., until the anniversary of their employment). Id. at 776–77. The court

1 held that this condition was invalid because it “attempts to effect a forfeiture of vacation pay
2 already vested.” Id. at 781. Here, RAB attached no such condition. It paid Yousuf for his unused
3 vacation time upon termination. Opp. at 3. RAB’s position is that it was free to require Yousuf to
4 use vacation time while he was still an employee. MTD at 4–6.

5 Yousuf also appears to suggest that RAB violated his employment agreements by requiring
6 him to use vacation time during the termination period. Opp. at 6 (“Yousuf’s first contract of
7 employment with RAB provided for paid vacation. . . . Yousuf’s second contract provided for
8 payment of 90 days termination pay. One contract cannot be used to pay for the other.”) This
9 argument might be relevant to Yousuf’s contract claims, but it has no bearing on Yousuf’s claim
10 that RAB violated California Labor Code §§ 201 and 203.

11 Lastly, Yousuf argues that an employers can require an employee to take vacation time
12 only if the employee will return to work afterwards. Opp. at 6. Yousuf cites no authority for this
13 rule, and the Court can find none.

14 **IV. CONCLUSION**

15 Yousuf has not stated a claim for violations of California Labor Code §§ 201 and 203.
16 Defendants’ motion to dismiss Yousuf’s fourth cause of action is GRANTED without leave to
17 amend.

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19 **IT IS SO ORDERED.**

20 Dated: February 28, 2017

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22 EDWARD J. DAVILA
23 United States District Judge

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